

AMENDED IN ASSEMBLY MARCH 23, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2098**

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**Introduced by Assembly Member Miller**

February 18, 2010

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~~An act to add Chapter 9.6 (commencing with Section 2430) to Division 3 of the Streets and Highways Code, relating to transportation. An act to amend Section 6802 of the Public Contract Code, relating to public contracts.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2098, as amended, Miller. ~~Federal transportation economic stimulus funds: 2nd round.~~ *Public contracts: design-build contracts.*

*Existing law sets forth requirements for the solicitation and evaluation of bids and the awarding of contracts by public entities for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement. Existing law, until January 1, 2014, also authorizes local transportation entities and the Department of Transportation, if authorized by the California Transportation Commission, to use a design-build process for contracting on certain transportation projects. Under these design-build provisions, the commission may authorize up to 5 local street or road, bridge, tunnel, or public transit projects of a local transportation entity, and up to 10 state highway, bridge, or tunnel projects of the Department of Transportation.*

*This bill would provide that a project of a local transportation entity may be approved by the commission under these provisions for the design-build method of procurement if the project is consistent with the Policy Guidance for Project Authorizations under the Design-Build*

*Demonstration Program adopted by the commission as Resolution G-09-09 on September 9, 2009. The bill would state that this modification shall be applied retroactively beginning with the date that Chapter 2 of the Statutes of 2009, 2nd Extraordinary Session, became operative.*

~~Existing law generally provides for programming and allocation of state and federal transportation capital improvement program funds pursuant to the state transportation improvement program process administered by the California Transportation Commission.~~

~~Existing law establishes special procedures and formulas for allocation and expenditure of federal transportation economic stimulus funds awarded to the state in 2009. Under these provisions, 37.5% of these funds are required to be apportioned for expenditure by the state to be programmed by the Department of Transportation, and the remaining 62.5% of funds are required to be apportioned to regional agencies.~~

~~This bill would enact provisions to govern the expenditure of the 2nd round of federal transportation economic stimulus funds that may be awarded to the state in 2010 pursuant to an unspecified federal act, subject to appropriation by the Legislature. The bill would provide for an unspecified division of the available funds between state and regional agencies. The bill would restrict allocation of the state portion of funds to projects in areas defined as economically distressed under federal law. The bill would enact various other requirements applicable to expenditure of the federal funds.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 6802 of the Public Contract Code is*
- 2     *amended to read:*
- 3     6802. (a) Subject to the limitations of this chapter, a local
- 4     transportation entity, if authorized by the commission, may utilize
- 5     the design-build method of procurement for up to five projects
- 6     that may be for local street or road, bridge, tunnel, or public transit
- 7     projects within the jurisdiction of the entity.
- 8     (b) Subject to the limitations of this chapter, the department, if
- 9     authorized by the commission, may utilize the design-build method
- 10    of procurement for up to 10 state highway, bridge, or tunnel
- 11    projects.

(c) A project of a local transportation entity may be approved by the commission pursuant to subdivision (a) for the design-build method of procurement if the project is consistent with the Policy Guidance for Project Authorizations under the Design-Build Demonstration Program adopted by the commission as Resolution G-09-09 on September 9, 2009. This subdivision shall be applied retroactively beginning with the date that Chapter 2 of the Statutes of 2009, Second Extraordinary Session, became operative.

SECTION 1. Chapter 9.6 (commencing with Section 2430) is added to Division 3 of the Streets and Highways Code, to read:

~~CHAPTER 9.6. SECOND ROUND FEDERAL TRANSPORTATION  
ECONOMIC STIMULUS FUNDS~~

~~2430. This chapter may be cited as the Transportation Economic Stimulus Act of 2010.~~

~~2431. The Legislature finds and declares all of the following:~~

~~(a) Congress has enacted the \_\_\_\_\_ Act, which provides in part for supplemental federal funding to the states for purposes of the federal-aid highway program.~~

~~(b) It is in the interest of the state to ensure that the highway infrastructure investment funds apportioned to the state under the federal act are fully obligated within the constraints of that act.~~

~~(c) It is the intent of the Legislature that the department, in consultation with the commission, regional transportation planning agencies, counties, and cities, shall have sufficient authority to make full and expeditious use of federal funds apportioned to the state for economic stimulus.~~

~~(d) It is the intent of the Legislature that, to the extent allowable under the federal act, priority be given to the use of stimulus funds available for expenditure to projects that put Californians to work and provide needed economic stimulus throughout the state. In particular, priority should be given to areas of the state experiencing the most severe economic hardships and distress associated with the current recession.~~

~~(e) It is the intent of the Legislature that highway infrastructure investment funds made available under the \_\_\_\_\_ Act are used to contribute to a transportation system that is in sound structural condition, accommodates all users, is environmentally sustainable, and allows for the efficient mobility of goods and people.~~

1     ~~(f) It is the intent of the Legislature that the deadlines for~~  
2     ~~obligating and liquidating funds established by the \_\_\_\_\_ Act apply~~  
3     ~~to all federal funds subject to this chapter.~~

4     ~~(g) It is the intent of the Legislature that the recipients of~~  
5     ~~highway infrastructure investment funds made available under the~~  
6     ~~federal act, including state, regional, and local agencies, shall~~  
7     ~~adhere to principles and policies that ensure government oversight~~  
8     ~~and management of the contracting process to ensure taxpayer~~  
9     ~~funds are spent wisely; contracts are not wasteful, inefficient, or~~  
10    ~~subject to misuse; unnecessary no-bid and cost-plus contracts are~~  
11    ~~avoided; and contracts are awarded according to the best interests~~  
12    ~~of California taxpayers.~~

13    ~~(h) As used in this chapter, “federal act” shall mean the \_\_\_\_\_~~  
14    ~~Act.~~

15    ~~2432. (a) The funds subject to this chapter shall be available~~  
16    ~~for obligation and expenditure by the dates specified in the federal~~  
17    ~~requirements implementing the federal act, upon appropriation by~~  
18    ~~the Legislature.~~

19    ~~(b) It is the intent of the Legislature to allow for such flexibility~~  
20    ~~as is necessary to permit the successful implementation of this~~  
21    ~~chapter.~~

22    ~~2433. (a) The federal highway infrastructure investment funds~~  
23    ~~made available to the state under the formula apportionments of~~  
24    ~~the federal act shall be considered part of the surface transportation~~  
25    ~~program as set forth in paragraphs (3) and (4) of subdivision (d)~~  
26    ~~of Section 133 of Title 23 of the United States Code. These formula~~  
27    ~~funds shall be apportioned \_\_\_\_\_ percent for expenditure by the~~  
28    ~~state to be programmed by the department and allocated by the~~  
29    ~~commission only in areas defined as economically distressed~~  
30    ~~according to federal law, and \_\_\_\_\_ percent to the metropolitan~~  
31    ~~planning organizations, county transportation commissions, and~~  
32    ~~regional transportation planning agencies in accordance with~~  
33    ~~subdivisions (b) and (c) of Section 182.6.~~

34    ~~(b) Funds available to be programmed by the department~~  
35    ~~pursuant to subdivision (a) shall be programmed for eligible~~  
36    ~~projects consistent with the federal act and this chapter.~~

37    ~~(c) It is the intent of the Legislature that at least \_\_\_\_\_ percent~~  
38    ~~of the funds apportioned to a metropolitan planning organization,~~  
39    ~~county transportation commission, or regional transportation~~  
40    ~~planning agency be available for suballocation by that entity to a~~

1 ~~city, county, or city and county for projects that meet the~~  
2 ~~requirements of the federal act and this chapter.~~

3 ~~(1) Any funds suballocated by a metropolitan planning~~  
4 ~~organization, county transportation commission, or regional~~  
5 ~~transportation planning agency that will not be obligated by a city,~~  
6 ~~county, or city and county by the deadlines specified in the federal~~  
7 ~~act shall be reallocated and available for expenditure as determined~~  
8 ~~by the metropolitan planning organization, county transportation~~  
9 ~~commission, or regional transportation planning agency.~~

10 ~~(2) A metropolitan planning organization, county transportation~~  
11 ~~commission, or regional transportation agency that suballocates~~  
12 ~~funds to a city, county, or city and county under this chapter shall~~  
13 ~~establish reporting procedures for the city, county, or city and~~  
14 ~~county to ensure that funds are obligated and expended in~~  
15 ~~accordance with the federal act and this chapter.~~

16 ~~(d) (1) A metropolitan planning organization, county~~  
17 ~~transportation commission, or regional transportation planning~~  
18 ~~agency receiving funds under this chapter shall notify the~~  
19 ~~department of the projected amount of obligational authority that~~  
20 ~~the entity intends to use, including for funds that the entity~~  
21 ~~suballocated to a city, county, or city and county pursuant to~~  
22 ~~subdivision (c). The report shall include, but not be limited to, a~~  
23 ~~list of projects that will be obligated by the following deadlines:~~

24 ~~(A) By \_\_\_\_\_ 2010, for the funds required to be obligated within~~  
25 ~~120 days of federal apportionment.~~

26 ~~(B) By \_\_\_\_\_ 2010, for any funds that will not be obligated within~~  
27 ~~one year of federal apportionment.~~

28 ~~(2) Any federal obligational authority that will not be used shall~~  
29 ~~be redistributed by the department to other projects in a manner~~  
30 ~~that ensures that the state will continue to compete for and receive~~  
31 ~~increased obligational authority during the federal redistribution~~  
32 ~~of obligational authority. To the extent practical, the funds shall~~  
33 ~~be obligated within the geographic areas relinquishing the~~  
34 ~~obligational authority.~~

35 ~~(e) Funds apportioned by this chapter are not eligible to be~~  
36 ~~exchanged for nonfederal State Highway Account funds as~~  
37 ~~provided in subdivision (g) or (h) of Section 182.6.~~

38 ~~(f) The public participation requirements under Title 23 of the~~  
39 ~~United States Code shall apply to all transportation projects using~~  
40 ~~federal funds made available pursuant to this chapter.~~

1     ~~2434. (a) The department, metropolitan planning organizations,~~  
2 ~~county transportation commissions, regional transportation~~  
3 ~~planning agencies, counties, cities, and a city and county shall~~  
4 ~~comply with all reporting requirements to the Federal Highway~~  
5 ~~Administration (FHWA) established in federal law regarding funds~~  
6 ~~made available under the federal act.~~

7     ~~(b) In complying with the requirements of subdivision (a), the~~  
8 ~~department, metropolitan planning organizations, county~~  
9 ~~transportation commissions, regional transportation planning~~  
10 ~~agencies, counties, cities, and a city and county shall provide the~~  
11 ~~same data they provide to the FHWA to the department under the~~  
12 ~~same timelines required by the FHWA or federal law. Regional~~  
13 ~~entities shall include in the data provided to the department~~  
14 ~~information on the use of federal funds made available under the~~  
15 ~~federal act that were suballocated to cities and counties within~~  
16 ~~their jurisdiction.~~

17     ~~(c) The department, within 30 days of receiving the information~~  
18 ~~required pursuant to subdivision (b), shall compile the information~~  
19 ~~and submit a report to the budget committees and policy~~  
20 ~~committees with jurisdiction over transportation matters in each~~  
21 ~~house of the Legislature.~~